IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 6957 of 2001

Between:

1. Indian Rayon and Industries ltd., O/o Veraval 362266, Gujarat, Branch Off. Plot No.1, Kirlampudi Layout, Beach Road, Vishakaptnam-530017, rep. by its Senoir Vice President Mr.K.B.R.Murthy.
2. Dhanapat Raj Dhariwal, Executive President, Age:50 Yrs., S/o.ate Harak Raj Dhariwal, R/o.Plot No.115, D.No.7-110-12/1, Sector-8, MVP Colony, Visakhapatnam.

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PETITIONERS

AND

1 Govt. of A.P., rep. by its General Manager, District Industries Centre, Vishakapatnam.
2 Mr.N.Veerabhadra Rao, General manager, District Industries Centre, Vishakaptnam.
3 Superintering Engineer/AAOAP Transco, Vishakapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to (a) call for the proceedings 3672/A8/2000 dt.16th Feb 2001 passed by the General manager, Dist. Industries Centre; (b) quash the same by the issuance of a writ, more, particularly in the nature of a writ of certiorari or any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.M.S.SRINIVASA IYENGAR,Advocate

Counsel for Respondents 1&2:GP FOR INDUSTRIES &

COMMERCE

Counsel for Respondent No.3: Standing Counsel for A.P. TRANSCO

The Court made the following Order:

The petitioner in this writ petition obtained a rule from this Court asking the respondents to show cause as to why a writ in the nature of Certiorari should not be issued under Article 226 of the Constitution of India by calling for the record relating to the impugned proceedings No.3672/A8/2000, dated 16-02-2004 passed by the General Manager, District Industries Centre, Visakhapatnam and to quash the same.

The petitioner, a public limited company, set up a unit in the name and style as “Birla Periclase” at Adityapatnam, Chippada Village, Bhimili Mandal, Visakhapatnam. The Government of Andhra Pradesh framed a comprehensive scheme of State Incentive for setting up new industries in Andhra Pradesh and accordingly issued G.O.Ms.No.117, dated 17-03-1993 by expanding the incentives, like investment subsidy, deferment/tax holiday on sales tax and rebate in electricity charges. Further, the Government in G.O.Ms.No.108, dated 20-05-1996 enunciated the industrial policy called “TARGET – 2000”. As per the Guidelines, all eligible new industries are entitled for investment subsidy at 20% of the fixed capital investment, but not exceeding Rs.20.00 lakhs and 135% sales tax exemption/deferment on fixed capital investment for a period of

7/14 years and 25% power rebate subject to a ceiling of 30/50 lakhs for small scale and large scale industrial units respectively for a period three years. As the petitioner industry went into commercial production from 27-02-1998, eligibility certificate was issued to the petitioner on 28-04-1998 certifying that it is entitled to claim 25% rebate on demand and energy charges from H.T. & L.T. with effect from 27-02-1998 for a period of three years and maximum up to Rs.50 lakhs only. Therefore, the petitioner availed the rebate on power bills to the maximum extent of Rs.50 lakhs in the months of June, July, August 1998. Due to adverse and extreme market condition and unavoidable reasons, the petitioner suspended its operation in December 1998 and decided to dispose of the plant facilities at Adityapatnam and a Board Resolution to the said effect was passed on 01-10-1999. While so, first respondent issued a show cause notice dated 24-11-2000 to the petitioner and passed the impugned order dated 16-02-2001 cancelling the eligibility certificate issued to the petitioner on 28-04-1998. Questioning the correctness of the same, the petitioner filed the present writ petition.

First respondent filed counter-affidavit stating that the eligibility certificate for availment of 25% power rebate was issued to the petitioner after commencement of commercial production on 27-02-1998 under “TARGET-2000” as per the conditions stipulated under G.O.Ms.No.108, dated 20-05-1996 including the guidelines laid therein. The petitioner should undertake continuous production of the unit for a period of 20 years as per the guidelines. As per para 4.12, read with para 22.2 of the Guidelines, if the unit goes out of production within the continuous period, the same can be recovered.

Third respondent filed counter-affidavit stating that on cancellation of the eligibility certificate granted to the petitioner, the power subsidy of Rs.50 lakhs has been recovered from the petitioner

by way of adjustment from the excess consumption deposit available with it.

Heard both the Counsel.

Learned counsel for the petitioners contended that Guideline No.22.0 contemplates recoveries of investment subsidy and interest subsidy for SC/STS and since the power consumption has already been availed, the same cannot be recovered on cancellation of the eligibility certificate. He further contended that the petitioner offered its explanation to the show cause notice requesting to grant right of personal hearing, in case respondents 1 and 2 decides to take action, but the same was not considered before passing the impugned order.

Learned Government Pleader reiterated the stand taken in the counter-affidavit contending that since the petitioner unit has not continued the production for a period of three years, It is not entitled to power rebate and the explanation given by the petitioner to the show cause notice was considered while passing the impugned order.

It is not in dispute that the petitioner's entitlement to eligibility certificate for payment of rebate on power tariff is only as per the scheme envisaged for giving incentives to the new industries. Processing of claim application and placing it before the authority and power rebate would be monitored by General Manager,District Industries center. Guideline No.20 envisaged continuous monitoring and periodical inspection of the beneficiary units on proper utilization of incentives during the first five years of production in respect of small-scale industries and 20 years in respect of large and medium scale industries and the details of inspection should be placed before the SLC/DLC. On placing the inspection details, the General Manager should record the details of inspection to ensure continuity in working and also fulfillment of conditions attached to the sanction of incentives. The large and medium industries are entitled to issue eligibility certificate in their favour for availing the rebate in power

charges at the rate of 25% for the first three years production, after filing the claim application. Accordingly certificate was granted to the petitioner and the District Industries Centre is also authorized to recover the incentives wherever it is warranted under the Guideline No.20.8.

As per the guidelines, incentives were provided through G.O.Ms.No.117 dated 17-03-1993 and G.O.Ms.No.108 dated 20-05-1996, and the industries will be granted investment subsidy and power rebate only to see that the industry runs at least for the period for which they are entitled to incentive.

Though it is stated that the explanation offered by the petitioner was considered before passing the impugned order cancelling the eligibility certificate, the order do not disclose consideration of the same.

In view of the same, it has to be seen that the non-consideration of the explanation causes any prejudice to the petitioner. In the explanation offered by the petitioner, it is categorically stated that it availed the rebate for the months of June, July, and August 1998 and thereafter paid electricity consumption charges. But, it is admitted by the petitioner that the unit is now closed. Once the petitioner admitted that the unit is closed, the General Manager of District Industries Centre, Visakhapatnam is empowered to take steps for recovery of the amount. In view of the same, cancellation of the eligibility certificate do not suffer from any manifest illegality or infirmities warranting interference by this Court.

The writ petition is accordingly dismissed. No costs.

23-06-2004

kdl

TO

1.The General Manager, Government of Andhra Pradesh, ,
Dist. Industries Centre,Visakhapatnam.

2. N.Veerabhadra Rao, General Manager,
Dist. Undustries Centre, Visakhapatnam.

3. Two C.Cs. to G.P. for Industries and Commerce, High Court of A.P. Buildings, Hyderabad (OUT)

4. Two C.D. Copies.